

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ROSS A. KESSLER,

Plaintiff(s),

-against-

DANIEL N. THISTLE and NATIONAL
FREIGHT, INC.,

Defendant(s).

08 CIV. 3409
NOTICE OF REMOVAL

State Index No.: 00954/08

Civil No.: _____

JUDGE CONNER

FILED
U.S. DISTRICT COURT
S.D. OF N.Y. W.P.
2008 APR 10 A 10:44

Defendant NATIONAL FREIGHT, INC., states the following:

1. Plaintiff commenced this action on or before January 29, 2008, by filing a Summons and Complaint in the Supreme Court of the State of New York, County of Orange bearing index number 00954/08 and captioned as above. Pursuant to 28 USC § 1446(a), an index of all copies of all process, pleadings and orders served upon the defendant is attached hereto as "Exhibit A," and a copy of the plaintiff's Summons and Verified Complaint is attached hereto as "Exhibit B."

2. The defendant was served in this action on or about March 11, 2008, plaintiff served defendant NATIONAL FREIGHT, INC. with a Summons and Verified Complaint via service on the Secretary of State. Service of process has been attempted but not yet made on co-defendant DANIEL N. THISTLE in this action. This was the first service that defendant NATIONAL FREIGHT, INC received in regards to this alleged accident.

3. This Notice of Removal is being filed within thirty (30) days after receipt of the Summons and Verified Complaint by defendants, DANIEL N. THISTLE and NATIONAL FREIGHT, INC., and is timely pursuant to 28 USC § 1446(b).

4. In the Verified Complaint, plaintiff alleges that on or about August 6, 2005, the plaintiff received personal injuries, resulting from a motor vehicle accident as owner and operator of a 2002 Hyundai motor vehicle, bearing license plate #BHT7897. Upon information and belief, the value of the injuries suffered by the plaintiff exceeds \$75,000.00. The basis for this belief is derived from receipt and review of plaintiff's complaint, wherein the plaintiff claims to have sustained a "severe and serious personal injury to his mind and body, some which, upon information and belief, are permanent with permanent effects of pain, disability, disfigurement and loss of body function." See Verified Complaint, Exhibit "B," at the Seventeenth and Eighteenth paragraphs. The sufficiency of this claim is not admitted.

5. In addition, plaintiff's counsel has represented that the matter exceeds \$75,000.00 based upon the neck surgery of plaintiff. In addition, through conversations with plaintiff's counsel regarding our intent to file a notice of removal. Plaintiff's counsel specifically refused to stipulate that this matter is worth less than the jurisdictional threshold amount of \$75,000.00.

6. Defendant, DANIEL N. THISTLE, is a resident from Pittsburg having his address in the State of New Hampshire. Defendant NATIONAL FREIGHT, INC., is a corporation organized and existing under and by virtue of the Law of the State of New Jersey, having its principal place of business in Cherry Hill, New Jersey. Plaintiff is a New York resident with a principal domicile in the City of Middletown.

7. Pursuant to 28 USC § 1332(c), full diversity exists among all parties.

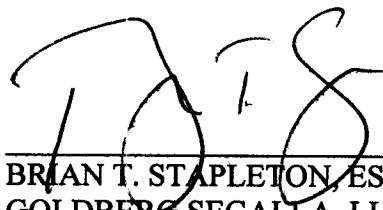
8. In so far as the amount in controversy is alleged to exceed \$75,000.00 and full diversity exists among the parties, removal is proper pursuant to 28 USC § 1332(a) and 28 USC § 1441(a).

9. Contemporaneously herewith, written notice is being given to all adverse parties and to the Clerk of the Supreme Court, State of New York of Orange County, that this Notice of Removal is being filed with this Court.

WHEREFORE, the defendants, DANIEL N. THISTLE and NATIONAL FREIGHT, INC., files this Notice of Removal so that the entire state court action under Index Number 00954/08, now pending in the Supreme Court, State of New York of Orange can be removed to this Court for further proceedings.

Dated: White Plains, New York
April 9, 2008

By:



BRIAN T. STAPLETON, ESQ. (BS 5640)
GOLDBERG SEGALLA, LLP

Attorneys for Defendants

DANIEL N. THISTLE and NATIONAL
FREIGHT, INC.,

170 Hamilton Avenue, Suite 203

White Plains, New York 10601

Ph: (914) 798-5400

E-mail: bstapleton@goldbergsegalla.com

EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ROSS A. KESSLER,

Plaintiff(s),

NOTICE OF REMOVAL

-against-

State Index No.: 00954/08

Civil No.: _____

DANIEL N. THISTLE and NATIONAL
FREIGHT, INC.,

Defendant(s).

**INDEX OF PROCESS, PLEADINGS AND ORDERS SERVED UPON
DEFENDANTS DANIEL N. THISTLE and NATIONAL FREIGHT, INC.,**

1. Summons and Verified Complaint dated January 22, 2008, and filed
January 29, 2008.

Exhibit List

A Index of all copies of all process, pleadings and orders served
B Summons and Verified Complaint

Date of Filing:

Index #:

2008 00954

Plaintiff designates
Orange County
as the place of trial.

The basis of venue is the
Plaintiff's residence address.

Plaintiff resides at
28 Friertay Road, Middletown,
N.Y. 10940

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

-----X
ROSS A. KESSLER,

Plaintiff,

SUMMONS

-against-

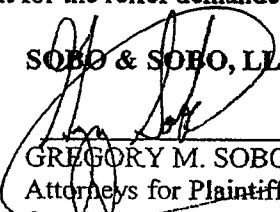
DANIEL N. THISTLE and NATIONAL
FREIGHT, INC.,

Defendants.
-----X

To the above-named defendants:

YOU ARE HEREBY SUMMONED, to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the plaintiff's attorneys within - 20- days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

SOBO & SOBO, LLP


GREGORY M. SOBO, ESQ.
Attorneys for Plaintiff
One Delson Avenue
Middletown, NY 10940
(845) 343-0466

Dated: January 22, 2007
Middletown, New York

Defendants' addresses: See Complaint

ORIGINAL FILED

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

-----X
ROSS A. KESSLER,

Plaintiff,

**VERIFIED
COMPLAINT**

-against-

DANIEL N. THISTLE and NATIONAL
FREIGHT, INC.,

Index No.:

2008 00954

Defendants.
-----X

Plaintiff, ROSS A. KESSLER, by his attorneys, SOBO & SOBO, L.L.P., as and
for the Verified Complaint, herein allege the following:

1. ~~That at all times hereinafter mentioned, the plaintiff was and still is a~~
resident of the County of Orange, State of New York.
2. That at all times hereinafter mentioned, upon information and belief, the
defendant, DANIEL N. THISTLE, was and still is a resident of the County of Coos, State
of New Hampshire.
3. That at all times hereinafter mentioned, upon information and belief, the
defendant, NATIONAL FREIGHT, INC., was and still is a domestic corporation
organized and existing under and by virtue of the Laws of the State of New Jersey.
4. That at all times hereinafter mentioned, upon information and belief, the
defendant, NATIONAL FREIGHT, INC., was and still is a foreign corporation duly
authorized to do business within the State of New York.
5. That at all times hereinafter mentioned, upon information and belief, the
defendant, NATIONAL FREIGHT, INC., was a still is a business entity doing business
within the State of New York.

6. That at all times hereinafter mentioned, upon information and belief, the defendant, NATIONAL FREIGHT, INC., was the titled owner of a 2001 Freight Trailer motor vehicle, bearing License Plate #P324427, for the State of Illinois.

7. That at all times hereinafter mentioned, upon information and belief, the defendant, NATIONAL FREIGHT, INC., was the registered owner of a 2001 Freight Trailer motor vehicle, bearing License Plate #P324427, for the State of Illinois.

8. That at all times hereinafter mentioned, upon information and belief, the defendant, DANIEL N. THISTLE, was the operator of the aforesaid 2001 Freight Trailer motor vehicle, bearing License Plate #P324427, for the State of Illinois.

9. That at all times hereinafter mentioned, this defendant, DANIEL N. THISTLE, operated the aforementioned 2001 Freight Trailer motor vehicle with the express and/or implied permission, consent and knowledge of the aforesaid defendant owner.

10. That at all times hereinafter mentioned, the plaintiff was the owner and operator of a 2002 Hyundai motor vehicle, bearing License Plate #BHT7897.

11. That at all times hereinafter mentioned, Brooklyn Queens Expressway at Montague Street, located in the City of Brooklyn, County of Kings and State of New York, was and still is a public highway and thoroughfare and was the situs of the accident herein.

12. That on or about the 6th day of August 2005, the aforementioned motor vehicles were in contact with each other.

13. The contact and injuries alleged herein were caused by the negligent, wanton, reckless and careless acts of the defendants herein.

14. That the defendants were negligent, wanton, reckless and careless in allowing, causing and/or permitting the motor vehicle owned and operated by said defendants herein to come into contact with the Plaintiff's motor vehicle; in failing to take those steps necessary to avoid the contingency which herein occurred; in breaching a duty to other motorists to operate the motor vehicle in a safe manner; in failing to keep the motor vehicle under proper control; in failing to operate the motor vehicle in a manner and at a speed that was reasonable and proper under the prevailing traffic conditions; in failing to properly keep and maintain the motor vehicle so as to prevent the contingency which herein occurred; in failing to properly operate the braking and acceleration devices of the motor vehicle under the circumstances of the roadway where the accident occurred; in failing to keep a proper lookout; in failing to stop and/or slow down; in violating the rules of the road; in failing to obey one or more traffic control device(s); in failing to observe that degree of caution, prudence and care which was reasonable and proper under the controlling circumstances; in acting with reckless disregard for the safety of others; in failing to keep alert and attentive; and the defendants were in other ways negligent, wanton, reckless and careless.

15. That the defendants, and each of them, are liable to the Plaintiff upon the doctrine of *res ipsa loquitur*.

16. The limited liability provisions of CPLR §1601 do not apply pursuant to the exceptions of CPLR §1602 (6) and (7).

17. That by reason of the foregoing, the plaintiff was caused to sustain severe and serious personal injuries to his mind and body, some of which, upon information and belief, are permanent with permanent effects of pain, disability, disfigurement and loss of

body function. Further, this plaintiff was caused to expend and become obligated for diverse sums of money for the purpose of obtaining medical care and/or cure in an effort to alleviate the suffering and ills sustained as a result of this accident; this plaintiff further was caused to lose substantial periods of time from his normal vocation, and upon information and belief, may continue in that way into the future and suffer similar losses.

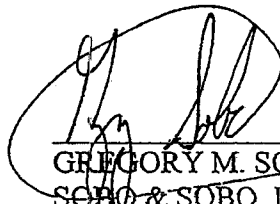
Furthermore, this plaintiff sustained a serious injury, as defined in the Insurance Law Section 5102(d) for the State of New York.

18. That by reason of the foregoing, this plaintiff has been damaged in a sum that exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction of this matter.

WHEREFORE, plaintiff demands judgment against the defendants, and each of them, as follows:

A sum that exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction in this matter, together with the costs and disbursements of this action.

DATED: January 22, 2007
Middletown, New York



GREGORY M. SOBO, ESQ.
SOBO & SOBO, LLP
Attorneys for Plaintiff
One Dolson Avenue
Middletown, NY 10940
(845) 343-0466

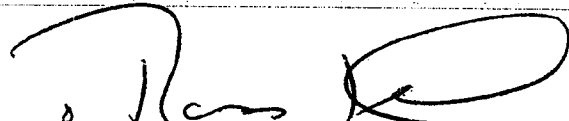
TO: DANIEL N. THISTLE
P.O. Box 265
Pittsburg, New Hampshire 03592

NATIONAL FREIGHT, INC.
C/o Secretary of State
State Street
Albany, New York

VERIFICATION


STATE OF NEW YORK, COUNTY OF ORANGE ss:

ROSS A. KESSLER, being duly sworn says; I am one of the plaintiffs in the action herein; I have read the annexed Verified Complaint, know the contents thereof and the same are true to my knowledge, except those matters therein which are stated to be alleged on information and belief, and as to those matters I believe them to be true.



ROSS A. KESSLER

Sworn to before me on this
12/17, 2007


NOTARY PUBLIC

JO ANN F. JUSINO
Notary Public, State Of New York
Qualified in Ulster County
Registration No. 01JU6063271
Commission Expires August 27, 2009

CT CORPORATION

A WoltersKluwer Company

**Service of Process
Transmittal**

03/12/2008

CT Log Number 513183104



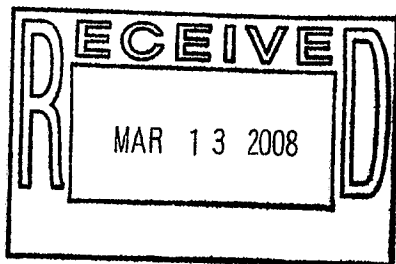
TO: Robert Barron, General Counsel
Interactive Logistics Inc.
1515 Burnt Mill Road
Cherry Hill, NJ 08003-3637

RE: Process Served in New York

FOR: National Freight, Inc. (Domestic State: NJ)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION:	Ross A. Kessler, Pltff. vs. Daniel N. Thistle and National Freight, Inc., Dfts.
DOCUMENT(S) SERVED:	Letter, Summons, Verified Complaint, Verification
COURT/AGENCY:	Orange County: Supreme Court, NY Case # 2003 00954
NATURE OF ACTION:	Personal Injury - Vehicle Collision - On 8/06/2005
ON WHOM PROCESS WAS SERVED:	C T Corporation System, New York, NY
DATE AND HOUR OF SERVICE:	By Certified Mail on 03/11/2008 postmarked on 03/03/2008
APPEARANCE OR ANSWER DUE:	Within 30 days after the service is complete
ATTORNEY(S) / SENDER(S):	Gregory M. Sobo Sobo & Sobo, LLP One Dolson Avenue Middletown, NY 10940 845-343-0466
REMARKS:	Papers were served on the New York State Secretary of State on 2/29/2008.
ACTION ITEMS:	SOP Papers with Transmittal, via Fed Ex Standard Overnight , 798394389437
SIGNED:	C T Corporation System
PER:	Christopher Tilton
ADDRESS:	111 Eighth Avenue New York, NY 10011
TELEPHONE:	212-894-8940



Page 1 of 1 / EB

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State of New York - Department of State
Division of Corporations

Party Served:
NATIONAL FREIGHT, INC.

Plaintiff/Petitioner:
KESSLER, ROSS A

C/O C T CORPORATION SYSTEM
111 EIGHTH AVENUE
NEW YORK, NY 10011

Dear Sir/Madam:

Enclosed herewith is a legal document which was served upon the Secretary of State on 02/29/2008 pursuant to SECTION 306 OF THE BUSINESS CORPORATION LAW.

This copy is being transmitted pursuant to such statute to the address provided for such purpose.

Very truly yours,
Division of Corporations

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

ROSS A. KESSLER,

Plaintiff,

-against-

DANIEL N. THISTLE and NATIONAL FREIGHT, INC.,

Defendants.

VERIFIED SUMMONS AND COMPLAINT

Sobo & Sobo LLP
Attorneys for Plaintiff
One Dolson Avenue
Middletown, New York 10940
(845) 343-0466

WWW.GOAFPS.COM
ALBANY, NY 12201
P.O. BOX 10277
RESEARCH SERVICE
&
ATTORNEYS PROCESS

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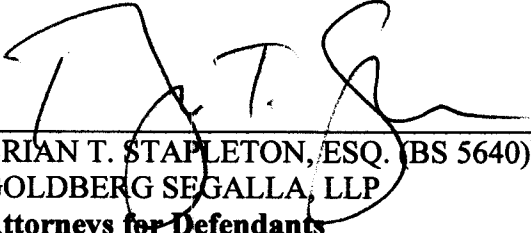
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Notice of Removal was served upon the following by deposit in the United States mail, first class postage prepaid, this 10TH day of April, 2008.

GREHORY M. SOBO, ESQ.
SOBO & SOBO, LLP
Attorney for Plaintiff
One Dolson Avenue
Middletown, NY 10940
(845) 343-0466

By:



BRIAN T. STAPLETON, ESQ. (BS 5640)
GOLDBERG SEGALLA, LLP
~~Attorneys for Defendants~~
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White Plains, New York 10601
Ph: (914) 798-5471
E-mail: bstapleton@goldbergsegalla.com